

BERCOW RADELL FERNANDEZ & LARKIN

ZONING, LAND USE AND ENVIRONMENTAL LAW

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VIA HAND-DELIVERY & EMAIL

August 10, 2018

Roy Coley, Director
Public Works Department
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Re: Revocable Permit Application for 1045 5th Street, 1031 5th Street, 527 Lenox Avenue & 543 Lenox Avenue, Miami Beach, Florida

Dear Mr. Coley:

This law firm represents MAC 1045 5th Street, LLC, (the "Applicant") for an application concerning the four (4) adjacent parcels located at 1045 5 Street, 1031 5 Street, 527 Lenox Avenue & 543 Lenox Avenue (collectively the "Property"). Please consider this letter the Applicant's letter of intent requesting City Commission approval of a Revocable Permit to permit partial encroachment into the City's right of way by eyebrows, fins that cover the stair core and permitted signs on the exterior of the approved building abutting the right of way in compliance with development approvals granted by the Planning Board ("PB") and the Historic Preservation Board ("HPB"). See PB Orders PB16-0053 and PB17-0152, and HPB Order HPB16-0059 (the "Development Approvals") attached.

Property Description. The Property is located along 5th Street to the south, Lenox Avenue to the west, and a public alleyway to the east, known as Michigan Court. It is comprised of approximately 43,500 square feet (approximately 1 acre) located on the northeast corner of the intersection of Lenox Avenue and 5th Street. The Property's four (4) parcels are identified by Miami-Dade County Folio Nos. 02-4204-002-0040, 02-4204-002-0030, 02-4203-009-7840 and 02-4203-009-7850.¹ The Property is located within the Ocean Beach Historic District and is zoned C-PS2, Commercial Performance Standard, General Mixed-use Commercial ("C-PS2"), a zoning district allowing a wide range of

¹ The Applicant is in the process of combining the four parcels into one unified parcel.

commercial uses as a main permitted use. The Property is currently under construction pursuant to the Development Approvals and Building Permit No. BC1704186 as described further below.

Approved Development Program. Pursuant to Development Approvals, the PB and HPB approved a 4-story development consisting of a parking garage and multiple retail bays (the "Approved Development"). The first two (2) levels of the structure will serve as solely retail, except for ramps at the north and east to access internal parking. The third level will have retail along the south and west and parking in the interior. There will be two (2) additional levels of parking on the fourth floor and the rooftop level, which is open-air. The majority of the parking fronting each of 5th Street and Lenox Avenue will be lined with retail uses and the remaining will be screened with decorative design features.

The approved plans provide for decorative elements that articulate and enhance the design of the building. Some of these elements minimally encroach into the abutting public rights of way above ground level, which is a typical historic feature of numerous other buildings in the City. The lowest hanging encroachment into the public rights of way is along the second level, 15'-1/2" above the ground level. Along the western boundary of the Property, the encroachments consist of fins and a roof overhang that cover and frame the stair core extending 2'-4 1/2", and building eyebrows projecting 11 1/2" along the center and north areas and 1'-11" along the southern area of the building, as well as a building identification signage at the fourth level projecting 1', into the Lenox Avenue public right of way. The maximum encroachment on the west is 2'-4 1/2". Along the eastern boundary of the Property, the encroachments on the second, third and fourth levels of the Approved Development are building eyebrows all stretching 11 1/2" into the public alley right of way.

Satisfaction of the Revocable Permit Criteria. The City Code provides the ability to obtain a revocable permit for the encroachment of the eyebrows, fins, and signage into the public rights of way. The Applicant satisfy the revocable permit criteria stated in Section 82-94 of the City Code as follows:

- **The Applicant's need is substantial.**

The Applicant respectfully requests the revocable permit in order to comply with the conditions of HPB Order No. HPB16-0059 to achieve the design of the project. The revocable permit will allow the Property to maintain compliance with this development approval and be compatible with the surrounding area.

- **The Applicant holds title to an abutting property.**

The Applicant owns the Property as confirmed by the opinion of title included with the application package.

- **The proposed improvements will comply with applicable codes, ordinances, regulations, neighborhood plans and laws.**

The proposed fins, eyebrows, and signage will comply with applicable codes, ordinances, regulations, neighborhood plans and laws, as evidenced by the HPB and PB approvals. The Applicant has requested a revocable permit to ensure that encroachment of the required fins, eyebrows, and signage complies with the applicable regulations.

- **The grant of the application will have no adverse effect on governmental/utility easements and uses on the property.**

The grant of the revocable permit will allow the Applicant to improve the Property with the approved design. The encroachments are minimal and will be installed at an appropriate height, allowing for a minimum clearance of 15'-1/2", which permits free pedestrian passage below the fins, eyebrows, and signage and does not obstruct the right-of-way. The encroachment will have no adverse effect on governmental/utility easements and uses on the property.

- **That the grant of the revocable permit will enhance the neighborhood and/or community by such amenities as, for example, enhanced landscaping, improved drainage, improved lighting, and improved security.**

The proposed encroachment will allow for the redevelopment of the Property with a signature building as approved by HPB and PB. The Approved Development will make better use of the Property by providing for needed retail use in the area and improving the pedestrian experience of the neighborhood.

- **That granting the revocable permit requested will not confer on the applicant any special privilege that is denied by this article to other owner of land, structures or buildings subject to similar conditions located in the same zoning district.**

Granting the revocable permit will not confer any special privilege upon the Applicant. Any property owner within the City of Miami Beach can apply for a revocable

Roy Coley, Director
August 10, 2018
Page 4 of 4

permit provided that the application meets the criteria stated in the Code, does not interfere with the utilization of public property, and enhances the community.

- **That granting the revocable permit will be in harmony with the general intent and purpose of this article, and that such revocable permit will not be injurious to surrounding properties, the neighborhood, or otherwise detrimental to the public welfare.**

Granting the revocable permit will not devalue any of the adjacent properties and will not have a detrimental effect on the public welfare. To the contrary, it will allow for an improved design upon the Property and a favorable use in the neighborhood.

Conclusion. The approval of this revocable permit application is necessary to successfully complete the redevelopment of the Property as provided by the HPB and PB approvals. We respectfully request your recommendation of approval for the revocable permit to allow the redevelopment of the Property. We believe that the granting of the revocable permit is compatible with the City's requirements and will ultimately result in a great improvement to the Property and the surrounding area. As always, we look forward to your favorable review. Should you have any questions, please do not hesitate to contact me at: (305) 377-6236.

Sincerely,



Matthew Amster

Attachments

**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 1045 5TH Street

FILE NO: PB16-0053

IN RE: The applicants, MAC 1045 5th Street, LLC, and MAC 1031 5th Street, LLC, requested Conditional Use approval for the construction of a new 4-story commercial development exceeding 50,000 square feet, including a parking garage, pursuant to Chapter 142, Article II and Chapter 118, Article IV of the City Code.

LEGAL DESCRIPTION: (Parcel 1) 1031 5TH Street

LOTS 9, BLOCK 98, MCGUIRE'S SUBDIVISION BEING A RESUBDIVISION OF LOTS 6, 7, 8, 9, 10, AND 11, BLOCK 98 OF OCEAN BEACH ADDITION NUMBER 3, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 6, PAGE 83, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

and

(Parcel 2) 1045 5th Street

LOTS 12, THROUGH 14, INCLUSIVE, BLOCK 98, OF OCEAN BEACH, FLORIDA ADDITION NUMBER 3, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 2, PAGE 81, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

LOTS 10 AND 11, OF MCGUIRE'S RESUBDIVISION OF LOTS 6 THROUGH 11, BLOCK 98 OF OCEAN BEACH, FLORIDA ADDITION NUMBER 3, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 6, PAGE 83, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

MEETING DATE: November 15, 2016

CONDITIONAL USE PERMIT

The applicants, MAC 1045 5th Street, LLC, and MAC 1031 5th Street, LLC, filed an application for Conditional Use approval for the construction of a new 4-story commercial development exceeding 50,000 square feet, including a parking garage, pursuant to Chapter 142, Article II and Chapter 118, Article IV of the City Code. Notice of the request for Conditional Use was

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given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property, upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

That the property in question is located in the Commercial Performance Standards District, General Mixed-Use Commercial (C-PS2);

That the intended Use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and Uses associated with the request are consistent with the City Code;

That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values if the following conditions are met.

IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the ~~staff recommendations which were amended by the Board, that the Conditional Use Permit as requested and set forth above be GRANTED, subject to the following conditions to which the applicant has agreed:~~

1. This Conditional Use Permit is issued to MAC 1045 5th Street, LLC, and MAC 1031 5th Street, LLC, as the applicant and owner of the property. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest, or the equivalent, shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
2. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, ~~in a form acceptable to the City Attorney, prior to the issuance of a building permit.~~
3. A Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
4. The plans shall be revised to ensure compliance with the Land Development Regulations prior to obtaining a building permit.
5. Prior to the issuance of a building permit for the project, the applicant shall submit an operational plan and narrative for the operation the parking garage. This operational plan

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and narrative shall be subject to the review and approval of staff and, at a minimum, shall satisfy the following:

- a) That the garage may be in operation 24 hours per day, seven days a week, as proposed by the applicant.
 - b) ~~There shall be monitoring of the garage during all hours of operation.~~
 - c) Warning signs prohibiting horn honking or car alarm sounding shall be posted prominently in a location, subject to the review and approval of staff.
6. The following shall apply to the operation of the entire facility:
- a) All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
 - b) Adequate air-conditioned and noise baffled trash room space shall be provided, in a manner to be approved by the Planning staff. Doors shall remain closed and secured when not in active use.
 - c) Trash dumpster covers shall be closed at all times except when in active use.
 - d) Delivery trucks shall not be allowed to idle in loading areas or in the alley.
 - e) Trash pick-ups and deliveries shall only take place between 8:00 AM and 6:00 PM on Mondays through Fridays; and 10:00 AM and 6:00 PM on Saturdays and Sundays.
 - f) Except as may be required for security, fire or building code/Life Safety Code purposes, no speakers affixed to or otherwise located on the exterior of the building shall be permitted.
7. Prior to the issuance of any Building Permit for the project, the applicant shall address the following Concurrency, Traffic and Parking requirements:
- a) There shall be sufficient area queuing in the entrance ramps to accommodate ~~anticipated traffic without extending onto Lenox Avenue, prior to a vehicle's~~ arrival at an entry gate.
 - b) The applicant shall comply with mitigation measures as may be deemed necessary by the City as a result of the traffic study peer review process, prior to any retail tenant obtaining a Business Tax Receipt.
 - c) A mountable curb shall be utilized for vehicles to enter the building to improve pedestrian flow along Lenox Avenue, in a manner to be reviewed and approved by staff.
 - d) A Method of Transportation (MOT), as applicable, shall be submitted to Public

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Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.

- e) If applicable, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.
 - f) A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.
 - g) Prior to the issuance of a Building Permit, calculations for required parking for the project shall be determined by the Planning Department. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of Occupancy or Business Tax Receipt, whichever comes first. If required, a one-time fee in lieu of providing the required parking on site or in combination with an annual fee, as determined by staff, shall be paid prior to the issuance of the Certificate of Occupancy.
 - h) The applicant shall provide 40 short-term bicycle parking spaces on the site that are available to customers and employees on the site, in a manner to be reviewed and approved by staff.
 - i) The applicant shall provide transit information to the public, including route schedules and maps within the lobby of the building in a manner to be reviewed and approved by the Transportation Department.
 - j) The driveway shall be designed and signed for a right turn-in and right turn-out only, in a manner to be reviewed and approved by staff.
 - k) A Transportation Demand Management Plan (TDM) shall be provided for review and approval of the Transportation Department prior to the issuance of a building permit for the interior build-out of individual tenant spaces.
8. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use should there be valid complaints or violations (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise related to parking or loading operations.
 9. The applicant, operator and/or owner, both now and in the future, shall abide by all the documents and statements submitted with this application, as well as all conditions of this Order.
 10. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 180 days from the time 75% of the commercial space is in operation. The progress report shall include, but not be limited to, updated information on traffic conditions surrounding the

site. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).

11. ~~The conditions of approval for this Conditional Use Permit are binding on the applicant,~~ the property owners, operators, and all successors in interest and assigns. Any substantial modifications to the plans submitted and approved as part of this application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans.
12. The applicant shall resolve all outstanding violations and fines on the property, if any, prior to the issuance of a building permit for the project.
13. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, of the City Code.
14. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the ~~remaining conditions or impose new conditions.~~
15. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
16. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the City Code, and shall be subject to enforcement procedures set forth in Section 114-8 of the Code and such other enforcement procedures as are permitted by law. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
17. Nothing in this order authorizes a violation of the City Code or other applicable law, nor ~~allows a relaxation of any requirement or standard set forth in the City Code.~~
18. As voluntarily proffered by the Applicant, no more than fifty percent (50%) of the ground floor may be aggregated with the second floor for a single tenant, unless otherwise approved by the Planning Board at a public hearing.
19. As voluntarily proffered by the Applicant, a minimum of three (3) separate retail establishments shall be located on the ground floor facing 5th Street, unless otherwise approved by the Planning Board at a public hearing.

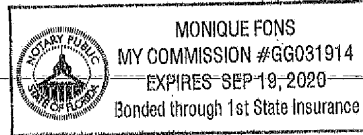
Dated this 19th day of JANUARY, 2017.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: *Michael Belush*
Michael Belush, Planning and Zoning Manager
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 19th day of January, 2017, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



Monique Fons
Notary:
Print Name MONIQUE FONTS
Notary Public, State of Florida
My Commission Expires: SEP. 19 2020
Commission Number:

{NOTARIAL SEAL}

Approved As To Form:
Legal Department

Justine → 11/18/17

Filed with the Clerk of the Planning Board on 1/19/2017 (*MB*)

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**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 1045 5TH Street

FILE NO: PB16-0053, PB17-0152

IN RE: The applicant, MAC 1045 5th Street, LLC, requested modifications to a previously issued Conditional Use Permit for the construction of a 4-story commercial development exceeding 50,000 square feet, including a parking garage. Specifically, the applicants are requesting to modify the previously approved garage access and increase the retail area, pursuant to Chapter 142, Article II and Chapter 118, Article IV of the City Code.

LEGAL DESCRIPTION: See "Exhibit A"

MEETING DATE: November 15, 2016, September 26, 2017

MODIFIED CONDITIONAL USE PERMIT

The applicant, MAC 1045 5th Street, LLC, filed an application for modifications to a Conditional Use approval for the construction of a new 4-story commercial development exceeding 50,000 square feet, including a parking garage, pursuant to Chapter 142, Article II and Chapter 118, Article IV of the City Code. Notice of the request for Conditional Use was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property, upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

That the property in question is located in the Commercial Performance Standards District, General Mixed-Use Commercial (C-PS2);

That the intended Use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and Uses associated with the request are consistent with the City Code;

That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values if the following conditions are met.

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IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendations which were amended by the Board, that the Conditional Use Permit as requested and set forth above be **GRANTED**, subject to the following conditions to which the applicant has agreed. Underlining denotes added language, and ~~strikethrough~~ denotes stricken language from the November 15, 2016 Conditional Use Permit:

1. This Conditional Use Permit is issued to MAC 1045 5th Street, LLC, as the applicant and owner of the property. Any change of operator or 50% (fifty percent) or more stock ownership, partnership interest, or the equivalent, shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
2. Where one or more parcels are unified for a single development, the property owner shall execute and record a unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney, prior to the issuance of a building permit.
3. A Construction Parking and Traffic Management Plan (CPTMP) shall be approved by the Parking Director pursuant to Chapter 106, Article II, Division 3 of the City Code, prior to the issuance of a Building Permit.
4. The plans shall be revised to ensure compliance with the Land Development Regulations prior to obtaining a building permit.
5. A revised streetscape plan for Lenox Avenue, prepared by a professional Landscape Architect, registered in the State of Florida, shall be submitted to and subject to the review and approval of staff, prior to the issuance of a permit for the reconfiguration of the garage access and removal of the Lenox Avenue landscape median. If approved by the Public Works and Transportation Departments, one of the north travel lanes shall be eliminated and the sidewalk adjacent to the subject property widened, in a manner to be approved by staff.
6. Prior to the issuance of a building permit for the project, the applicant shall submit an operational plan and narrative for the operation the parking garage. This operational plan and narrative shall be subject to the review and approval of staff and, at a minimum, shall satisfy the following:
 - a) That the garage may be in operation 24 hours per day, seven days a week, as proposed by the applicant.
 - b) There shall be monitoring of the garage during all hours of operation.
 - c) Warning signs prohibiting horn honking or car alarm sounding shall be posted prominently in a location, subject to the review and approval of staff.

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7. The following shall apply to the operation of the entire facility:
- a) All trash containers shall utilize rubber wheels, or the path for the trash containers shall consist of a surface finish that reduces noise, in a manner to be reviewed and approved by staff.
 - b) Adequate air-conditioned and noise baffled trash room space shall be provided, in a manner to be approved by the Planning staff. Doors shall remain closed and secured when not in active use.
 - c) Trash dumpster covers shall be closed at all times except when in active use.
 - d) Delivery trucks shall not be allowed to idle in loading areas or in the alley.
 - e) Trash pick-ups and deliveries shall only take place between 8:00 AM and 6:00 PM on Mondays through Fridays; and 10:00 AM and 6:00 PM on Saturdays and Sundays.
 - f) Except as may be required for security, fire or building code/Life Safety Code purposes, no speakers affixed to or otherwise located on the exterior of the building shall be permitted.
8. Prior to the issuance of any Building Permit for the project, the applicant shall address the following Concurrency, Traffic and Parking requirements:
- a) There shall be sufficient area queuing in the entrance ramps to accommodate anticipated traffic without extending onto Lenox Avenue, prior to a vehicle's arrival at an entry gate.
 - b) The applicant shall comply with mitigation measures as may be deemed necessary by the City as a result of the traffic study peer review process, prior to any retail tenant obtaining a Business Tax Receipt.
 - c) A mountable curb shall be utilized for vehicles to enter the building to improve pedestrian flow along Lenox Avenue, in a manner to be reviewed and approved by staff.
 - d) A Method of Transportation (MOT), as applicable, shall be submitted to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
 - e) If applicable, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.



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- f) A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs, if required, shall be paid prior to the issuance of any Building Permit.
 - g) Prior to the issuance of a Building Permit, calculations for required parking for the project shall be determined by the Planning Department. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of Occupancy or Business Tax Receipt, whichever comes first. If required, a one-time fee in lieu of providing the required parking on site or in combination with an annual fee, as determined by staff, shall be paid prior to the issuance of the Certificate of Occupancy.
 - h) The applicant shall provide 40 short-term bicycle parking spaces on the site that are available to customers and employees on the site, in a manner to be reviewed and approved by staff.
 - i) The applicant shall provide transit information to the public, including route schedules and maps within the lobby of the building in a manner to be reviewed and approved by the Transportation Department.
 - j) The driveway shall be designed and signed for a right turn-in, left turn-in and right turn-out only, in a manner to be reviewed and approved by staff.
 - k) A Transportation Demand Management Plan (TDM) shall be provided for review and approval of the Transportation Department prior to the issuance of a building permit for the interior build-out of individual tenant spaces.
9. The Planning Board shall retain the right to call the owner or operator, both now and in the future, back before the Board and modify this Conditional Use should there be valid complaints or violations (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise related to parking or loading operations.
 10. The applicant, operator and/or owner, both now and in the future, shall abide by all the documents and statements submitted with this application, as well as all conditions of this Order.
 11. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The applicant shall appear before the Planning Board for a progress report within 180 days from the time 75% of the commercial space is in operation. The progress report shall include, but not be limited to, updated information on traffic conditions surrounding the site. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).

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12. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns. Any substantial modifications to the plans submitted and approved as part of this application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans.
13. The applicant shall resolve all outstanding violations and fines on the property, if any, prior to the issuance of a building permit for the project.
14. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, of the City Code.
15. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
16. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
17. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the City Code, and shall be subject to enforcement procedures set forth in Section 114-8 of the Code and such other enforcement procedures as are permitted by law. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
18. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.
19. As voluntarily proffered by the Applicant, no more than fifty percent (50%) of the ground floor may be aggregated with the second floor for a single tenant, unless otherwise approved by the Planning Board at a public hearing.
20. As voluntarily proffered by the Applicant, a minimum of three (3) separate retail establishments shall be located on the ground floor facing 5th Street, unless otherwise approved by the Planning Board at a public hearing.



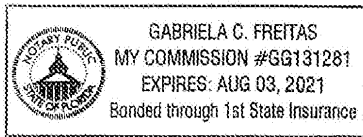
Dated this 5th day of OCTOBER, 2017.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY: Michael Belush
Michael Belush, Chief of Planning and Zoning
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 5 day of OCTOBER, 2017, by Michael Belush, Chief of Planning and Zoning for the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



{NOTARIAL SEAL}

Gabriela C. Freitas
Notary:
Print Name Gabriela C. Freitas
Notary Public, State of Florida
My Commission Expires: 8-3-21
Commission Number: GG 131281

Approved As To Form: [Signature], 10/5/17
Legal Department

Filed with the Clerk of the Planning Board on [Signature] (10/5/17)

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EXHIBIT A

LEGAL DESCRIPTION:

Lots 9, 10 and 11 less the South 10.00 feet thereof, Block 98, McGUIRES' SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6 at Page 83 and Lots 12, 13 and 14, Block 98, OCEAN BEACH, FLA. ADDMON NO. 3, according to the Plat thereof, as recorded in Plat Book 2 at Page 81, all being of the Public Records of Miami-Dade County, Florida.

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HISTORIC PRESERVATION BOARD
City of Miami Beach, Florida

MEETING DATE: December 13, 2016

FILE NO: HPB16-0059

PROPERTY: 1045 5th Street, 1031 5th Street, 527 Lenox Avenue & 543 Lenox Avenue

APPLICANT: MAC 1045 5th Street, LLC & MAC 1031 5th Street, LLC

LEGAL: Parcel 1: Lot 9, Block 98 of MCGUIRE'S SUBDIVISION being a resubdivision of Lots 6, 7, 8, 9, 10, 11, Block 98 of OCEAN BEACH ADDITION NO.3 according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Parcel 2: Lots 12 through 14, inclusive, Block 98 of OCEAN BEACH ADDITION NO. 3, according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

Lots 10 and 11 of MCGUIRE'S SUBDIVISION of Lots 6 through 11, Block 98 of OCEAN BEACH ADDITION NO. 3, according to the plat thereof recorded in Plat Book 6, Page 83 of the public records of Miami Dade County, Florida.

IN RE: The application for a Certificate of Appropriateness for the total demolition of two 'Non-Contributing' buildings and for the design of a new 4-story commercial building, including variances to exceed the maximum permitted building height and to eliminate the open court requirement.

ORDER

The City of Miami Beach Historic Preservation Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

I. Certificate of Appropriateness

~~A. The subject site is located within the Ocean Beach Local Historic District.~~

B. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted:

1. Is consistent with the Certificate of Appropriateness Criteria in Section 118-564(a)(1) of the Miami Beach Code.
2. Is consistent with Certificate of Appropriateness Criteria in Section 118-564(a)(2) of the Miami Beach Code.
3. Is not consistent with Certificate of Appropriateness Criteria 'a', 'b', 'e' & 'f' in Section 118-564(a)(3) of the Miami Beach Code.

Page 2 of 8
HPB16-0059
Meeting Date: December 13, 2016

4. Is not consistent with Certificate of Appropriateness Criteria 'a-e' for Demolition in Section 118-564(f)(4) of the Miami Beach Code.

C. The project would be consistent with the criteria and requirements of section 118-564 if the following conditions are met:

1. Revised elevations, site plan and floor plan drawings shall be submitted and, at a minimum, such drawings shall incorporate the following:
 - a. The design for the North elevation shall be consistent with the revised sheets 26, 49 and 50 submitted by the Applicant to the Board on December 13, 2016, entitled "BLVD at Lenox" as prepared by Zyscovich Architects, dated 12/09/16, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - b. The ground floor shall be setback a minimum of 12" from the Lenox Avenue property line in order to increase the Lenox Avenue sidewalk to a minimum of 10'-6" in width, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - c. Final details of all exterior surface finishes and materials, including samples, shall be submitted, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - d. The final design and details of all exterior lighting shall be provided, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board. Lighting shall be designed in a manner to not have an adverse overwhelming impact upon the surrounding historic district.
 - e. The internal garage lighting shall be shielded to inhibit direct views of all internal light sources from either the street or adjacent properties, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- f. All kitchen venting and other venting shall be chased to the roof and venting systems shall be employed as necessary to minimize or dissipate smoke, fumes and odors, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- g. All building signage shall require a separate permit. A uniform sign plan for the new building shall be required. Signage shall consist of reverse channel, back-lit letters, in a manner to be approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- h. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms; such transformers and

Page 3 of 8
 HPB16-0059
 Meeting Date: December 13, 2016

vault rooms, and all other related devices and fixtures, shall not be provided within the interior of the building, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.

- i. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and elevation drawings and shall be screened from view, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
 - j. In the event that the City Commission renames or co-names 5th Street as "Miami Beach Boulevard", the Applicant shall provide a bronze plaque, which includes a brief biography of former City of Miami Beach Mayor John H. Levi, at the property, in a manner to be reviewed and approved by staff, consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
2. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:
- a. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan for all trees to be retained on site. Such plan shall be subject to the review and approval of staff, and shall include, but not be limited to a sturdy tree protection fence installed at the dripline of the trees prior to any construction.
 - b. In order to identify, protect and preserve mature trees on site, which are suitable for retention and relocation, a Tree Report prepared by a Certified Tree Arborist shall be submitted for the mature trees on site.
 - c. Any tree identified to be in good overall condition shall be retained, and protected in their current location if they are not in conflict with the proposed garage, or they shall be relocated on site, if determined feasible, subject to the review and approval of staff. A tree care and watering plan also prepared by a Certified Arborist shall be submitted prior to the issuance of a Building Permit or Tree Removal/Relocation Permit. Subsequent to any approved relocation, a monthly report prepared by a Certified Arborist shall be provided to staff describing the overall tree performance and adjustments to the maintenance plan.
 - d. Within 6 months of BTRs being issued for at least 75% of the retail areas, the applicant shall prepare a bicycle use analysis for the property to determine if additional bicycle racks are needed and, if warranted, install up to an additional 6 city-wide standard bicycle racks subject to the review and approval of staff.

Page 4 of 8
 HPB16-0059
 Meeting Date: December 13, 2016

- e. Canopy shade street trees shall be required within the sidewalk along Lenox Avenue and 5th Street, spaced approximately 20'-0" on center if not in conflict with existing utilities, in a manner to be reviewed and approved by the Public Works Department.
- f. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.
- g. The utilization of root barriers and/or Silva Cells, as applicable, shall be clearly delineated on the revised landscape plan.
- h. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow prevention devices. Backflow prevention devices shall not be permitted within any required yard or any area fronting a street or sidewalk, unless otherwise permitted by the Land Development Regulations. The location of all backflow prevention devices, and how they are screened from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all post-indicator valves (PIV), fire department connections (FDC) and all other related devices and fixtures, which shall be clearly indicated on the site and landscape plans.

In accordance with Section 118-537, the applicant, the owner(s) of the subject property, the City Manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the Board's decision on a Certificate of Appropriateness to a special master appointed by the City Commission.

II. Variance(s)

- A. The applicant filed an application with the Planning Department for the following variance(s), which were either approved by the Board with modifications, or denied (Underlying denotes new language and ~~strikethrough~~ denotes stricken language):
 - 1. ~~A variance to exceed by 2'-1" the maximum allowed building height of 50'-0" in order to construct a new 4-story commercial building up to 52'-1" as measured from 13.0' NGVD.~~
 - 2. A variance to eliminate the requirement to provide an open court area at the front of the property, in order to construct a new 4-story commercial building without an open court along 5th Street.
- B. The applicant has submitted plans and documents with the application that satisfy Article 1, Section 2 of the Related Special Acts, allowing the granting of a variance if the Board finds that practical difficulties exist with respect to implementing the proposed project at the subject property.

Page 5 of 8
HPB16-0059
Meeting Date: December 13, 2016

The applicant has submitted plans and documents with the application that also indicate the following, as they relate to the requirements of Section 118-353(d), Miami Beach City Code:

That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district;

That the special conditions and circumstances do not result from the action of the applicant;

That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, buildings, or structures in the same zoning district;

That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance and would work unnecessary and undue hardship on the applicant;

That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure;

That the granting of the variance will be in harmony with the general intent and purpose of this Ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare; and

That the granting of this request is consistent with the comprehensive plan and does not reduce the levels of service as set forth in the plan.

C. The Board hereby **Approves** the Variance requests as noted in II.A.1 and II. A.2, and imposes the following conditions based on its authority in Section 118-354 of the Miami Beach City Code:

1. Substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans, even if the modifications do not affect variances approved by the Board.

2. All rooftop lighting fixtures shall be designed in manner to preclude light from spilling over to adjacent properties and the number and location of rooftop light poles great than 10'-0" in height shall be consistent with number and location light poles shown on sheets 26 and 27 of the plans entitled "The BLVD at Lenox" as prepared by Zyscovich Architects, dated 10-24-2016, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.

Page 6 of 8
 HPB16-0059
 Meeting Date: December 13, 2016

3. Approval from the public Works department shall be required in order to construct the canopy and building projections over the public right of way facing Lenox Avenue and the alley.

The decision of the Board regarding variances shall be final and there shall be no further review thereof except by resort to a court of competent jurisdiction by petition for writ of certiorari.

III. General Terms and Conditions applying to both 'I. Certificate of Appropriateness' and 'II. Variances' noted above.

- A. Where one or more parcels are unified for a single development, the property owner shall execute and record an unity of title or a covenant in lieu of unity of title, as may be applicable, in a form acceptable to the City Attorney.
- B. Applicant agrees that in the event Code Compliance receives complaints of unreasonably loud noise from mechanical and/or electrical equipment, and determines the complaints to be valid, even if the equipment is operating pursuant to manufacturer specifications, the applicant shall take such steps to mitigate the noise with noise attenuating materials as reviewed and verified by an acoustic engineer, in a manner to be reviewed and approved by staff consistent with the Certificate of Appropriateness Criteria and/or the directions from the Board.
- C. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
 - A. The Final Order shall be recorded in the Public Records of Miami-Dade County, within 30 days of the Board approval.
 - B. Applicant shall submit revised plans pursuant to Board conditions no later than 60 days after Board approval, as required.
 - C. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
 - D. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
 - E. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.

Page 7 of 8
HPB16-0059
Meeting Date: December 13, 2016

F. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, ~~testimony and materials presented at the public hearing, which are part of the record for this matter,~~ and the staff report and analysis, which are adopted herein, including the staff recommendations, which were amended and adopted by the Board, that the application is GRANTED, for the above-referenced project subject to those certain conditions specified in Paragraph I, II, III of the Findings of Fact, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans entitled "The BLVD at Lenox" as prepared by Zyscovich Architects, dated 10-24-2016 and plans entitled "BLVD at Lenox" as prepared by Zyscovich Architects, dated 12/09/16, and as modified and approved by the Historic Preservation Board, as determined by staff.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order. No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance, as set forth in this Order, have been met.

The issuance of the approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required. When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original approval was granted, the application will expire and become null and void, unless the applicant makes an application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. If the Full Building Permit for the project should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), ~~the application will expire and become null and void.~~

In accordance with Chapter 118 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code. Failure to comply with this Order shall subject the application to Chapter 118 of the City Code, for revocation or modification of the application.

Dated this 15 day of December, 2016.

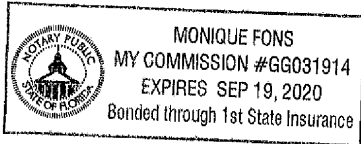
HISTORIC PRESERVATION BOARD
THE CITY OF MIAMI BEACH, FLORIDA

Page 8 of 8
HPB16-0059
Meeting Date: December 13, 2016

BY: *[Signature]*
DEBORAH TACKETT
CHIEF OF HISTORIC PRESERVATION
FOR THE CHAIR

STATE OF FLORIDA)
)SS
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 15th day of December 2016 by Deborah Tackett, Chief of Historic Preservation, Planning Department, City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



[Signature]
NOTARY PUBLIC
Miami-Dade County, Florida
My commission expires: 9/19/2020

Approved As To Form
City Attorney's Office: *[Signature]* (12/14/16)

Filed with the Clerk of the Historic Preservation Board on *[Signature]* (12/15/16)

[Handwritten mark]